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*Administrative  
Conference  
of the  
United States*

*...Partnership & Cooperation*

Office of the Chairman  
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**Judicial Review**

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**Regulation**

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**Governmental Processes**

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**Rulemaking**

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## *Purpose*

The **Administrative Conference of the United States (ACUS)** is the only federal government agency whose primary mission is to improve and reform the administrative procedures used by the federal government. ACUS was established by Congress in 1964 to provide on-going advice and assistance to all branches of the federal government in examining issues of administrative law and regulatory procedure in order to support the achievement of agency missions. The administrative process is the backbone of all government agencies. It is at work when agencies adjudicate individual claims for benefits; when agencies issue, revise, abolish, and implement regulations; when agencies award licenses; and when agencies protect taxpayers' investment by debarring fraudulent or nonperforming contractors. Nearly everything that a government agency does involves administrative procedure.

## *Responsibilities*

In addition to the mandates contained in the Administrative Conference Act (5 U.S.C. §§591-596), Congress and the President have assigned numerous other responsibilities to ACUS...

### *Congress*

- **Government in the Sunshine Act (1976).** Agencies must consult with ACUS before promulgating regulations to implement the Act (5 U.S.C. §552b(g)) to ensure uniformity.
- **Equal Access to Justice Act (1980).** Agencies must consult with ACUS before promulgating regulations to implement the Act (5 U.S.C. §504(c)(1)); The Chairman must file annual reports with Congress on fees and expenses awarded under the Act to litigants against the Government in administrative adjudications (§504(e)) to assist with oversight of agency implementation of the Act.
- **Administrative Dispute Resolution Act (1990).** ACUS is the key implementing agency under the Act (5 U.S.C. §§571-583). Agencies must consult with ACUS on alternative dispute resolution policies.
- **Negotiated Rulemaking Act (1990).** ACUS is the key implementing agency under the Act (5 U.S.C. §§561-570). ACUS has numerous responsibilities, including reports to Congress, training in negotiated rulemaking techniques, assistance to agencies, etc.
- **Civil Rights Act (1991).** Authorizes the Office of Senate Fair Employment Practices to consult with ACUS about procedures and to appoint hearing officers after considering candidates recommended by ACUS (and others) (Pub. L. No. 102-164).
- **Pub. L. No. 102-403 (1992).** Authorizes ACUS to provide administrative law assistance to foreign governments at the behest of the Department of State, Agency for International Development, or United States Information Agency.
- **Pub. L. No. 104-1 (1995).** The Congressional Accountability Act gives the Conference statutory responsibility for examining and making recommendations regarding the implementation of the numerous health, safety, and labor statutes that will now apply to three Congressional agencies -- the Library of Congress, the General Accounting Office, and the Government Printing Office.

### *President*

ACUS played a key role in the Administration's **National Performance Review (NPR)**. Assigned the task of identifying steps to improve the regulatory process, ACUS' Research Director chaired the Task Force on Improving Regulatory Systems. This role continues as the Administration takes steps to implement the NPR recommendations.

## *Process ----- Partnership & Cooperation*

ACUS forges a public/private partnership by combining the resources of approximately 100 members from both government agencies and the private sector with a small, expert legal staff. Members are selected in a manner that provides a broad representation of the views of private citizens and utilizes diverse experience, so that ACUS recommendations are considered from a variety of viewpoints and are virtually assured of being practical and solidly grounded. The unique structure of the Conference allows federal agencies, and the general public, to benefit from the research performed by leaders in the field of administrative law.

The Conference is organized around six standing committees: **Adjudication**--studies agency adjudicative processes. **Administration**--considers ADR and procedures federal agencies use to operate assistance, procurement, and other administrative programs. **Government Processes**--focuses on techniques government agencies use to implement federal programs. **Regulation**--focuses on administrative procedures applicable to oversight of private economic activities. **Rulemaking**--considers range of matters related to agency processes for issuing rules and regulations. **Judicial Review** -- considers those aspects of administrative law or practice that affect the availability or effectiveness of judicial review of agency decisions.

In addition to its standing committees, ACUS is uniquely positioned to create partnerships when the need arises. The Conference has established a series of very active Alternative Dispute Resolution (ADR) Interagency Working Groups that have become a driving force in changing agency culture, developing training activities, and coordinating activities across the government. Finally, in response to a National Performance Review recommendation, the Conference convened a special interagency advisory group to explore ways to increase the effectiveness of agency offices of general counsel. With partnership as its goal,

## *Services*

### **EXPERT ADVICE AND TECHNICAL ASSISTANCE (1994-1995)**

Service rendered by ACUS' Office of the Chairman to requesting agencies include:

- Assisting the Internal Revenue Service's National Office of Appeals to implement a program aimed at resolving complicated tax disputes.
- Chairing the National Performance Review's Task Force for Improving Regulatory Systems.
- Providing technical assistance to Congressional committees as they draft legislation.
- Designing pilot mediation programs, such as the program currently being used in EEO disputes for the Department of Transportation's Federal Aviation Administration.
- Coordinating the design of mediation and dispute resolution systems for the United States Air Force.
- Evaluating mediation programs for the U.S. District Court for the District of Columbia.
- Providing guidance and assistance to the Occupational Safety & Health Administration in preparing a negotiated rulemaking for construction safety standards.
- Assisting the Environmental Protection Agency (EPA) with the evaluation of the agency's use of negotiated rulemaking focusing on tangible costs and benefits.

*Services (continued)*

**TRAINING AND EDUCATION**

- Training facilitators and members of an FCC negotiating committee in principles of negotiated rulemaking.
- Training Department of Labor officials in implementing a pilot program to resolve disputes in enforcement cases.
- Designing and conducting courses on ADR for the Office of Personnel Management.
- Developing and presenting training programs in mediation and settlement skills for the administrative law judges of the National Labor Relations Board, Federal Energy Regulatory Commission, and the Environmental Protection Agency.
- Developing and conducting innovative courses on ADR procedures and on administrative law for the Department of Justice's Legal Education Institute.
- Developing and presenting administrative law courses to Congressional staff.
- Publishing a series of Sourcebooks and guides used by all general counsel's offices in the federal government.
- Maintaining a Federal Depository Library used extensively by other agencies and the public.

## *Services (continued)*

### **INFORMATION TECHNOLOGY**

Sponsoring the National Performance Review's E-mail pilot study designed to provide, at minimal cost, interactive access to:

- A database of private sector and public mediators and arbitrators.
- On-line libraries of materials on how the government has implemented and used alternatives to litigation to resolve internal, interagency, and external conflicts.
- Electronic Conference Rooms for confidential (real-time) working group meetings to discuss issues, revise draft documents, and negotiate positions.

### **FOREIGN ASSISTANCE**

The Conference is recognized internationally as the U.S. Government's expert on administrative law and agency organization, procedure, and management. In 1992 Congress gave ACUS a new responsibility to provide administrative law assistance to foreign governments. Assistance is provided on a reimbursable basis in partnership, and with the concurrence of, the Department of State, AID, or the U.S. Information Agency (USIA). Since 1992, ACUS has...

- Worked with the Ukrainian Institute of Public Administration to present a week-long seminar on administrative law and regulation of a market economy to government officials, judges, and scholars in Kiev, Ukraine (Funding provided by USIA).
- Participated in a bilateral administrative law exchange at the request of the Chinese Ministry of Personnel (Funding provided by USIA and the United Nations Development Programme).
- Recruited law professors and other administrative law experts, former judges, court administrators, librarians, and other experts to serve as "professionals-in-residence" on rule-of-law projects in African countries, including Ethiopia, Ghana, Kenya, Malawi, South Africa, Tanzania, and Zambia (Funding provided by USIA).
- Consulted with officials from the British Council of Tribunals, Australian Administrative Review Council, Canadian Council of Administrative Tribunals and from many other counterpart administrative reform agencies in other nations.

## *Customer Service*

In addition to every American citizen, ACUS' customers are the entire federal government and, it is called upon regularly for advice.

## *Legislative Branch*

A regular source of formal and informal advice to Congress, ACUS has testified 37 times since 1988 on topics as diverse as...

- Uniform handling of private sector whistleblower cases.
- The effect of federal regulation on state and local governmental units.
- Establishing a separate court of appeals to hear social security cases.
- Use of alternatives to conventional litigation in medical malpractice cases involving the federal government.
- Reform of the structure of government oversight of thrift institutions.

Congress has incorporated more than 30 ACUS recommendations into reform legislation including ...

- Landmark proposals that encourage replacing conventional administrative litigation and rulemaking with consensual approaches that place greater decisional responsibility in the hands of citizens affected by governmental action.
- Creation of the modern "administrative imposition" model by which most agencies now collect civil money penalties in furtherance of their regulatory enforcement responsibilities. The recommendation, and model civil penalty statute drafted by ACUS, have been the framework for more than 200 separate civil penalty statutes.

## *Judicial Branch*

The Conference has made numerous recommendations to improve procedures used by the courts in reviewing agency action. The Conference...

- Works with federal courts in a unique experiment to establish and evaluate various mediation techniques used in resolving selected cases.
- Works with appeals courts to expedite cases alleging agency bias or refusal to act on citizen requests.
- Provides scholarship and recommendations routinely relied on by the Supreme Court and the lower courts.
- Provides solutions to costly "races to the courthouses" and to avoidance of jurisdictional disputes in contract dispute cases.

## *Customer Service (continued)*

### *Executive Branch*

The Conference has made scores of recommendations that have been adopted by the President and Executive Branch agencies such as...

- streamlining the Social Security Administration's ability to dispense benefits.
- developing the first-of-its-kind code of conduct for presidential transition team members.
- urging modifications to Freedom of Information Act procedures that added protections for businesses that submit information to the government in confidence.
- encouraging greater use of simplified procedures for adjudication of cases involving alleged OSHA violations.

In addition, ACUS provides expert advice on a reimbursable basis to other agencies in the Executive Branch. Examples include:

Department of Commerce  
Department of Labor  
Environmental Protection Agency  
Federal Aviation Administration  
Federal Communications Commission  
Federal Energy Regulatory Commission  
Immigration & Naturalization Service  
Internal Revenue Service  
National Commission on Migrant Education

National Labor Relations Board  
National Mediation Board  
Occupational Health & Safety Administration  
Office of Juvenile Justice & Delinquency Prevention  
Office of Personnel Management  
Social Security Administration  
United States Air Force  
United States Information Agency

ACUS also responds to frequent informal requests for information and advice.

## *Costs ---- and Benefits*

### *Costs & Benefits*

The Administrative Conference of the United States is among the most economically efficient organizations in the U. S. Government. With an annual budget of under \$2 million, the Conference, through its recommendations, saves federal money by streamlining federal administrative processes. This is only possible due to the many hours of work contributed by the non-government members of the Conference in cooperation with the government members. This in-kind contribution that the Conference receives is estimated at \$250,000 per year.

Reports by Federal agencies indicate that there are significant savings to the federal government as a result of several ACUS-initiated programs. Alternative dispute resolution (ADR) programs implemented across the government have resulted in significant savings. It is anticipated that negotiated rulemaking will have a similar effect by drastically reducing the level and cost of litigation, which will also produce longer term savings. Among the specific success stories...

- **The United States Air Force** -- Reports that mediation was successful in resolving over 50% of more than 700 EEO cases during fiscal years 1992 and 1993. The Air Force estimates that approximately half of the average \$80,000 processing cost per EEO complaint was avoided by use of mediation.
- **The Federal Deposit Insurance Company** -- Has documented savings of \$9.3 million in legal fees and expenses through use of ADR in 1993 (up from \$4.2 million in 1992). A recent pilot project limited to its Franklin, Massachusetts office realized cost savings of \$410, 475 in 9 creditor claims cases.

## *Costs — and Benefits (continued)*

- **The Department of Treasury** - The United States Mint estimates that 220 formal and informal EEO cases and grievances have been settled through the use of ADR techniques. Based on past experience, the Mint estimates that 50 % of these cases would have been litigated in the absence of ADR, with an average cost to the Government of \$38,000 per case. Taking into account costs associated with administering ADR programs and applying ADR techniques in these 220 cases, the Mint estimates that the use of ADR resulted in savings of \$3 million.

The Conference also prepares government-wide administrative law publications for use by government attorneys. The total research, preparation, and printing cost to the Conference is considerably less than the cost of each individual agency compiling and reproducing these reference books. For 1994, the estimated savings to the Government from this centralized publication totaled \$600,000.

In addition, the ACUS recommendation simplifying so-called “races to the courthouse” when the public challenges agency action directly resulted in reform legislation. Passed by Congress in 1988, legislation implementing this recommendation produced between \$1.5 million and \$2.3 million in savings through 1993.

*And* lastly, while it is difficult to obtain reliable data about the costs of regulatory proceedings, negotiated rulemaking (reg-neg), another ACUS-fostered program, substantially reduces the level of litigation. The interactive process of consensus building and negotiating rules results in a savings to the Government. Agencies estimate that with the use of regulatory negotiations, the level of litigation and related costs will be reduced by at least 75%.

## *Forecast for the Future*

### *ACUS as a Catalyst*

- Regulatory Reform
  - Alternative Approaches to Compliance and Enforcement
  - Negotiated Rulemaking & Other Consensus Building Techniques
- Alternatives to Litigation in Agency Cases
  - Labor and Employment Disputes
  - Environmental Disputes
  - Government Contracts Disputes
- Public Participation in Agency Decisionmaking
- Openness in Government
- Small Business Relief
- Streamlining Agency Procedures
- Using Information Technology to Provide Access to Government
- Assisting U.S. Trade through the Harmonization of International Standards
- Working with State and Local Governments
- Research and Development

## *Staff*

|                                                 |                                                                                                                                     |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b>Chair</b>                                    | Thomasina V. Rogers                                                                                                                 |
| <b>Special Assistant to the Chair</b>           | Penny K. Pickett                                                                                                                    |
| <b>General Counsel</b>                          | Gary J. Edles                                                                                                                       |
| <b>Executive Director</b>                       | Connie M. Harshaw, <i>Acting</i>                                                                                                    |
| <b>Research Director</b>                        | Jeffrey S. Lubbers                                                                                                                  |
| <b>Staff Attorneys</b>                          | Mary Candace Fowler<br>Deborah S. Laufer<br>Nancy G. Miller<br>Charles E. Pou, Jr.<br>David M. Pritzker                             |
| <b>Public Information</b>                       | Renée Barnow<br>Oskian Kouzouian                                                                                                    |
| <b>Librarian</b>                                | Katie Ziegler                                                                                                                       |
| <b>Financial Operations</b>                     | Lavette M. Miller                                                                                                                   |
| <b>Program and Administrative Support Staff</b> | Sharon D. Anderson<br>Diane D. Campbell<br>Gloria J. Coffey<br>Kimberly D'Souza<br>Angela Roach<br>B. Clarice Ulu<br>Arlene Woodley |

*NOTES:*

